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Lance R. Miller, Assistant Commissioner for
Site Remediation
State of New Jersey
Department of Environmental
Protection and Energy
401 East State Street - CN 028
Trenton, New Jersey 08625-0028

Dear Mr. Miller:

On May 13, 1992, the U.S. Environmental Protection Agency (EPA) met with the State of New Jersey Department of Environmental Protection and Energy (NJDEPE) to discuss NJDEPE's proposed approach to investigate and remediate the Berry's Creek drainage basin. The proposed approach is a comprehensive, coordinated strategy to study and remediate the creek to achieve overall protection of human health and the environment throughout the basin. The approach responds to technical difficulties associated with utilizing a site-specific, piecemeal approach to address a basin-wide contamination problem.

As recognized by NJDEPE, the proposed approach raises some regulatory issues that must be addressed. EPA agrees in principle with this approach and is committed to assist NJDEPE in seeking resolution of these issues. However, EPA believes that the scope of the proposal needs to be more focused to ensure that this effort is manageable and can be conducted in an efficient manner.

With respect to regulatory challenges, it is our understanding that this effort will be performed under state authority. As you are aware, there are several National Priorities List (NPL) sites included in this proposal. Consequently, there are requirements in the Comprehensive Environmental Response, Compensation and Liability Act and the National Oil and Hazardous Substances Pollution Contingency Plan that must be met to delete these sites from the NPL. In addition, the SCP Carlstadt site is a federal, enforcement-lead NPL site. These factors necessitate compliance with federal requirements and definition of a clear approach to coordinate this effort with Region II's Superfund Program. In addition to an overall approach for communicating and coordinating, specific coordination issues must be addressed.

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For example, although EPA will support NJDEPE in its effort to encourage the SCP potentially responsible parties (PRPs) to participate in a basin-wide study, EPA has concerns regarding NJDEPE issuing unilateral directives to these PRPs should negotiations prove unsuccessful. Since the SCP PRPs are currently under order with EPA, such a directive may undermine EPA's and NJDEPE's ability to require compliance with our enforcement documents should the SCP PRPs elect to litigate this matter. This could result in delays in implementing work which could otherwise be avoided through proper coordination.

Should our efforts to have PRPs conduct a coordinated study prove unsuccessful, Superfund would not be able to fund remedial activities that are not related to NPL sites. In addition, EPA would have to consider the legal implications of funding the Superfund portion of this project, since the SCP, Universal Oil Products and Ventron/Velsicol PRPs are currently complying with orders which include this work. If a single funding source is desirable, matters would be simplified if NJDEPE would use its own resources. However, if necessary, EPA will explore options to resolve legal impediments associated with providing federal funding. With respect to having a single lead for the project, if we can resolve the issues that have been raised, EPA would be agreeable to NJDEPE being the lead agency for the basin-wide study.

With regard to focusing the scope of the proposal, your staff has advised EPA that there may be as many as eighty (80) potential sources. Several of those are multi-party sites (such as SCP, which has 159 parties). The large number of sources may make negotiations and implementation extremely difficult to manage. EPA has suggested that NJDEPE use several key compounds (e.g., polychlorinated biphenyls and mercury, which are both prevalent and persistent in the creek) and link these specific contaminants to potential sources during the PRP search. It is our understanding that NJDEPE is agreeable to this strategy. We also agree that the study should be pragmatic, not academic in nature. There is a wealth of information regarding contamination in this drainage basin. Therefore, the first phase in characterizing contamination should be an extensive literature search. The sampling plan for the creek would then reflect this information and be predicated on collecting the data needed to support evaluation of remedial alternatives.

EPA looks forward to continuing its discussions with NJDEPE to resolve these issues. If you have any questions, please feel free to call me at (212) 264-8672.

Sincerely yours,

Kathleen C. Callahan, Director
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